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[DISCUSSION DRAFT]
August 13, 1987

100TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. BERMAN (for himself and Mr. Fascell) introduced the following bill; which was referred to the Committee on

A BILL

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Antiterrorism and Arms
3 Export Amendments Act of 1987``.

4 SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUNTRIES
5 SUPPORTING TERRORISM.

6 (a) PROHIBITION.--Section 40 of the Arms Export Control
7 Act (22 U.S.C. 2780) is amended to read as follows:

8 ``SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF
9 INTERNATIONAL TERRORISM.

10 `` (a) PROHIBITED TRANSACTIONS.--

11 `` (1) UNITED STATES GOVERNMENT.--The following
12 transactions by the United States Government are
13 prohibited with respect to any country described in
14 subsection (b):

15 `` (A) Exporting or otherwise providing (by sale,
16 lease or loan, grant, or other means), directly or
17 indirectly, any munitions item to such country under
18 the authority of this Act, the Foreign Assistance Act
19 of 1961, or any other law. In implementing this
20 subparagraph, the United States Government shall
21 suspend delivery to such country of any such item
22 pursuant to any such transaction which has not been
23 completed at the time the Secretary of State makes
24 the determination described in subsection (b), and
25 shall terminate any lease or loan to such country of

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1 any such item which is in effect at the time the
2 Secretary of State made that determination.

3 `` (B) Providing credits, guarantees, or other
4 financial assistance under the authority of this Act,
5 the Foreign Assistance Act of 1961, or any other law,
6 with respect to the acquisition of any munitions item
7 by such country. In implementing this subparagraph,
8 the United States Government shall suspend
9 expenditures pursuant to any such assistance
10 obligated before the Secretary of State made the
11 determination described in subsection (b).

12 `` (C) Consenting under section 3(a) of this Act,
13 under section 505(a) of the Foreign Assistance Act of
14 1961, under the regulations issued to carry out
15 section 38 of this Act, or under any other law, to
16 any transfer of any munitions item to such country.
17 In implementing this subparagraph, the United States
18 Government shall withdraw any such consent which is
19 in effect at the time the Secretary of State makes
20 the determination described in subsection (b).

21 `` (D) Providing any license or other approval
22 under section 38 of this Act for any export or other
23 transfer (including by means of a technical
24 assistance agreement, manufacturing licensing
25 agreement, or coproduction agreement) of any

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1 munitions item to such country. In implementing this
2 subparagraph, the United States Government shall
3 suspend any such license or other approval which is
4 in effect at the time the Secretary of State makes
5 the determination described in subsection (b).

6 `` (E) Otherwise participating directly or
7 indirectly in, or take any action to facilitate, the
8 acquisition of any munitions item by such country.
9 This subparagraph applies with respect to activities
10 of any department, agency, or other instrumentality
11 of the Government, any officer or employee of the
12 Government (including members of the United States
13 Armed Forces), and any person acting at the request
14 or on behalf of the Government.

15 `` (2) UNITED STATES PERSONS.--A United States person
16 may not intentionally--

17 `` (A) export or otherwise provide directly or
18 indirectly (by sale, lease or loan, grant, or any
19 other means) any munitions item to any country
20 described in subsection (b) or to any person or
21 entity which that United States person has reason to
22 believe will provide such item to any such country;
23 or

24 `` (B) otherwise participate directly or
25 indirectly in, or take any action to facilitate, the

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1 acquisition of any munitions item by any country
2 described in subsection (b) or by any person or
3 entity which that United States person has reason to
4 believe will provide such item to any such country.

5 This paragraph applies with respect to actions taken by a
6 United States person either within or outside the United
7 States.

8 ``(b) COUNTRIES COVERED BY PROHIBITION.--The prohibitions
9 contained in subsection (a) apply with respect to any country
10 whose government the Secretary of State determines--

11 ``(1) grants sanctuary from prosecution to any
12 individual or group which has committed an act of
13 international terrorism; or

14 ``(2) has repeatedly provided support for acts of
15 international terrorism.

16 ``(c) PUBLICATION OF DETERMINATIONS.--Each determination
17 of the Secretary of State under subsection (b) shall be
18 published in the Federal Register.

19 ``(d) RESCISSION.--A determination made by the Secretary
20 of State under subsection (b) may not be rescinded unless the
21 President, at least 90 days before the proposed rescission
22 would take effect, submits to the Speaker of the House of
23 Representatives and the chairman of the Committee on Foreign
24 Relations of the Senate a report justifying the rescission
25 and certifying that--

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1 ``(1) the government concerned has not provided any
2 support for international terrorism, including support or
3 sanctuary for any major terrorist or terrorist group,
4 during the preceding 6-month period; and

5 ``(2) the government concerned has provided
6 assurances that it will not support acts of international
7 terrorism in the future.

8 ``(e) WAIVER.--The President may waive the prohibition
9 contained in subsection (a) with respect to a specific
10 transaction if--

11 ``(1) the President determines that the transaction
12 is vital to the national security interests of the United
13 States; and

14 ``(2) not less than 15 days prior to the proposed
15 transaction, the President--

16 ``(A) consults with the Committee on Foreign
17 Affairs of the House of Representatives and the
18 Committee on Foreign Relations of the Senate; and

19 ``(B) submits to the Speaker of the House of
20 Representatives and the chairman of the Committee on
21 Foreign Relations of the Senate a report containing--

22 ``(i) the name of any country involved in the
23 proposed transaction, the identity of any
24 recipient of the items to be provided pursuant to
25 the proposed transaction, and the anticipated use

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1 of those items;

2 “(ii) a description of the munitions items
3 involved in the proposed transaction (including
4 their market value) and the actual sale price at
5 each step in the transaction (or if the items are
6 transferred by other than sale, the manner in
7 which they will be provided);

8 “(iii) the reasons why the proposed
9 transaction is vital to the national security
10 interests of the United States and the
11 justification for such proposed transaction;

12 “(iv) the date on which the proposed
13 transaction is expected to occur; and

14 “(v) the name of every United States
15 Government department, agency, or other entity
16 involved in the proposed transaction, every
17 foreign government involved in the proposed
18 transaction, and every private party with
19 significant participation in the proposed
20 transaction.

21 To the extent possible, the information specified in
22 subparagraph (B) of paragraph (2) shall be provided in
23 unclassified form, with any classified information provided
24 in an addendum to the report.

25 “(f) EXEMPTION FOR CERTAIN REPORTED ACTIVITIES.--The

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1 prohibitions contained in subsection (a) do not apply with
2 respect to a transfer for which notification is given in
3 accordance with section 36(e) of this Act.

4 `` (g) RELATION TO OTHER LAWS.--The provisions of this
5 section shall apply notwithstanding section 614(a) of the
6 Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)) or any
7 other provision of law.

8 `` (h) CRIMINAL PENALTY.--Any person who willfully
9 violates this section shall be fined for each violation not
10 more than \$1,000,000, imprisoned not more than 10 years, or
11 both.

12 `` (i) CIVIL PENALTIES; ENFORCEMENT.--In the enforcement
13 of this section, the President is authorized to exercise the
14 same powers concerning violations and enforcement which are
15 conferred upon departments, agencies, and officials by
16 sections 11(c), 11(e), 11(g), and 12(a) of the Export
17 Administration Act of 1979 (subject to the same terms and
18 conditions as are applicable to such powers under that Act),
19 except that, notwithstanding section 11(c) of that Act, the
20 civil penalty for each violation of this section may not
21 exceed \$500,000.

22 `` (j) DEFINITIONS.--As used in this section--

23 `` (1) the term 'munitions item' means any item which,
24 if imported into or exported from the United States,
25 would be on the United States Munitions List; and

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1 “(2) the term ‘United States person’ means any
2 United States resident or national (other than an
3 individual resident outside the United States and
4 employed by other than a United States person), any
5 domestic concern (including any permanent domestic
6 establishment of any foreign concern) and any foreign
7 subsidiary or affiliate (including any permanent foreign
8 establishment) of any domestic concern which is
9 controlled in fact by such domestic concern, as
10 determined under regulations of the President.”.

11 (b) CONFORMING AMENDMENT.--Section 3(f) of the Arms
12 Export Control Act (22 U.S.C. 2753(f)) is repealed.

13 SEC. 3. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LICENSES
14 AND IN ARMS SALES.

15 (a) EXPORT LICENSES.--Section 38(a)(2) of the Arms Export
16 Control Act (22 U.S.C. 2778) is amended by inserting
17 “support international terrorism,” after “arms race,”.

18 (b) ARMS SALES.--Section 36(b)(1)(D) of that Act (22
19 U.S.C. 2776(b)(1)(D)) is amended--

20 (1) by redesignating clauses (ii) through (iv) as
21 clauses (iii) through (v), respectively; and

22 (2) by inserting the following new clause (ii) after
23 clause (i):

24 “(ii) support international terrorism;”.

25 SEC. 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.

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1 Section 6(j) of the Export Administration Act of 1979 (50
2 U.S.C. App 2405(j)) is amended to read as follows:

3 `` (j)(1) A validated license shall be required for the
4 export of goods or technology to a country if the Secretary
5 of State has made the following determinations:

6 `` (A) The government of such country grants sanctuary
7 from prosecution to any individual or group which has
8 committed an act of international terrorism, or the
9 government of such country has repeatedly provided
10 support for acts of international terrorism.

11 `` (B) The export of such goods or technology would
12 contribute to the military potential of such country,
13 would be destined to a military end-user or for military
14 end-use in such country, or would enhance the ability of
15 such country to support acts of international terrorism.

16 `` (2) Applications for any validated license required
17 under paragraph (1) shall be generally denied by the
18 Secretary.

19 `` (3) The Secretary and the Secretary of State shall
20 notify the Committee on Foreign Affairs of the House of
21 Representatives and the Committee on Banking, Housing, and
22 Urban Affairs and the Committee on Foreign Relations of the
23 Senate at least 30 days before issuing any validated license
24 required by paragraph (1).

25 `` (4) Each determination of the Secretary of State under

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1 paragraph (1)(A), including each determination in effect on
2 the date of the enactment of the Antiterrorism and Arms
3 Export Amendments Act of 1987, shall be published in the
4 Federal Register.

5 `` (5) A determination made by the Secretary of State
6 under paragraph (1)(A) may not be rescinded unless the
7 President, at least 90 days before the proposed rescission
8 would take effect, submits to the Speaker of the House of
9 Representatives and the chairman of the Committee on Banking,
10 Housing, and Urban Affairs and the chairman of the Committee
11 on Foreign Relations of the Senate a report justifying the
12 rescission and certifying that--

13 `` (A) the government concerned has not provided any
14 support for international terrorism, including support or
15 sanctuary for any major terrorist or terrorist group,
16 during the preceding 6-month period; and

17 `` (B) the government concerned has provided
18 assurances that it will not support acts of international
19 terrorism in the future.''.
20

21 **SEC. 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING
22 INTERNATIONAL TERRORISM.**

23 Section 620A of the Foreign Assistance Act of 1961 (22
24 U.S.C. 2371) is amended to read as follows:

25 `` **SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS
SUPPORTING INTERNATIONAL TERRORISM.**

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1 “(a) PROHIBITION.--The United States shall not provide
2 any assistance under this Act, the Agricultural Trade
3 Development and Assistance Act of 1954, the Peace Corps Act,
4 or the Export-Import Bank Act to any country whose government
5 the Secretary of State determines--

6 “(1) grants sanctuary from prosecution to any
7 individual or group which has committed an act of
8 international terrorism; or

9 “(2) has repeatedly provided support for acts of
10 international terrorism.

11 “(b) PUBLICATION OF DETERMINATIONS.--Each determination
12 of the Secretary of State under subsection (a), including
13 each determination in effect on the date of the enactment of
14 the Antiterrorism and Arms Export Amendments Act of 1987,
15 shall be published in the Federal Register.

16 “(c) RESCISSION.--A determination made by the Secretary
17 of State under subsection (a) may not be rescinded unless the
18 President, at least 90 days before the proposed rescission
19 would take effect, submits to the Speaker of the House of
20 Representatives and the chairman of the Committee on Foreign
21 Relations of the Senate a report justifying the rescission
22 and certifying that--

23 “(1) the government concerned has not provided any
24 support for international terrorism, including support or
25 sanctuary for any major terrorist or terrorist group,

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1 during the preceding 6-month period; and

2 `` (2) the government concerned has provided
3 assurances that it will not support acts of international
4 terrorism in the future.

5 `` (d) WAIVER.--Assistance prohibited by subsection (a)
6 may be provided to a country described in that subsection
7 if--

8 `` (1) the President determines that national security
9 interests or humanitarian reasons justify a waiver of
10 subsection (a), except that humanitarian reasons may not
11 be used to justify assistance under part II of this Act
12 (including chapter 4, chapter 6, and chapter 8), or the
13 Export-Import Bank Act; and

14 `` (2) at least 15 days before the waiver takes
15 effect, the President consults with the Committee on
16 Foreign Affairs of the House of Representatives and the
17 Committee on Foreign Relations of the Senate regarding
18 the proposed waiver and submits a report to the Speaker
19 of the House of Representatives and the chairman of the
20 Committee on Foreign Relations of the Senate containing--

21 `` (A) the name of the recipient country;

22 `` (B) a description of the national security
23 interests or humanitarian reasons which require the
24 waiver;

25 `` (C) the type and amount of and the

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1 justification for the assistance to be provided
2 pursuant to the waiver; and
3 ``(D) the period of time during which such waiver
4 will be effective.

5 The waiver authority granted in this subsection may not be
6 used to provide any assistance under the Foreign Assistance
7 Act of 1961 which is also prohibited by section 40 of the
8 Arms Export Control Act.''.

9 SEC. 6. NOTICE TO CONGRESS OF THIRD COUNTRY TRANSFERS.

10 (a) ITEMS SOLD UNDER FMS PROGRAM.--The last sentence of
11 section 3(a) of the Arms Export Control Act (22 U.S.C.
12 2753(a)) is amended to read as follows: ``In those instances
13 where a certification from the President is not required
14 pursuant to subsection (d), the President shall, before
15 granting any consent under paragraph (2) of this subsection,
16 submit a report with respect to such consent to the Speaker
17 of the House of Representatives and to the chairman of the
18 Committee on Foreign Relations of the Senate (such report to
19 be submitted at least 15 days before the effective date of
20 the consent unless the President certifies in his report that
21 an emergency exists which requires that consent become
22 effective immediately in the national security interests of
23 the United States) and shall notify the Congress in writing
24 of any developments which alter or supplement the information
25 provided in such report.''.

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1 (b) ITEMS EXPORTED PURSUANT TO A MUNITIONS

2 LICENSE.--Section 38 of that Act (22 U.S.C. 2778) is amended
3 by adding at the end the following:

4 `` (g) In those instances where a report from the
5 President is not required pursuant to section 3(d)(3), the
6 President--

7 `` (1) before granting any consent to a transfer of
8 any defense article or defense service, the export of
9 which has been licensed or approved under this section,
10 shall submit a report with respect to such consent to the
11 Speaker of the House of Representatives and to the
12 chairman of the Committee on Foreign Relations of the
13 Senate (such report to be submitted at least 15 days
14 before the effective date of the consent unless the
15 President certifies in his report that an emergency
16 exists which requires that consent become effective
17 immediately in the national security interests of the
18 United States); and

19 `` (2) shall notify the Congress in writing of any
20 developments which alter or supplement the information
21 provided in such report.``.

22 (c) ITEMS PROVIDED UNDER MAP PROGRAM.--Section 505 of
23 the Foreign Assistance Act of 1961 (22 U.S.C. 2314) is
24 amended by adding at the end the following:

25 `` (h) The President shall, before granting any

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1 consent under subsection (a)(1)(B), submit a report with
2 respect to such consent to the Speaker of the House of
3 Representatives and to the chairman of the Committee on
4 Foreign Relations of the Senate and shall notify the
5 Congress in writing of any developments which alter or
6 supplement the information provided in such report. The
7 report required by this subsection shall be submitted at
8 least 15 days before the effective date of the consent
9 unless the President certifies in his report that an
10 emergency exists which requires that consent become
11 effective immediately in the national security interests
12 of the United States.''.

13 SEC. 7. DOD TRANSFERS TO OTHER AGENCIES.

14 (a) QUARTERLY REPORTS.--Section 36 (a) of the Arms Export
15 Control Act (22 U.S.C. 2776(a)) is amended--

16 (1) by striking out ``and'' at the end of paragraph
17 (9);

18 (2) by striking out the period at the end of
19 paragraph (10) and inserting in lieu thereof ``; and'';
20 and

21 (3) by inserting after paragraph (9) the following:

22 `` (10) a listing of all defense articles or defense
23 services which were sold, leased, or otherwise
24 transferred by the Department of Defense to any other
25 Government department, agency, or other entity during the

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1 quarter for which such report is submitted (including the
2 name of the recipient Government entity and a discussion
3 of what that entity will do with those defense articles
4 or defense services) if--

5 `` (A) the value of the defense articles or
6 defense services was \$250,000 or more; or

7 `` (B) the value of all defense articles and
8 defense services transferred to that Government
9 department, agency, or other entity during that
10 quarter was \$250,000 or more;

11 excluding defense articles and defense services
12 transferred for disposition or use solely within the
13 United States.''.

14 (b) CLASSIFICATION OF REPORTS.--That section is amended
15 in the parenthetical clause in the text preceding paragraph
16 (1) by inserting `` , and any information provided under
17 paragraph (10) of this subsection may also be provided in a
18 classified addendum'' after `` (b)(1) of this section''.

19 SEC. 8. NOTICE TO CONGRESS OF CERTAIN ARMS TRANSFERS.

20 Section 36 of the Arms Export Control Act (22 U.S.C.
21 2776) is amended by adding at the end the following:

22 `` (e) The United States Government may not, under the
23 authority of this or any other Act, transfer or assist in the
24 transfer of any munitions item (as defined in section 40(j))
25 directly or indirectly to any foreign government, any foreign

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1 group or person, or any other person outside the United
2 States Government pursuant to a Presidential finding under
3 section 662 of the Foreign Assistance Act of 1961 unless the
4 President notifies the chairman and ranking minority member
5 of the Committee on Foreign Affairs of the House of
6 Representatives and the chairman and ranking minority member
7 of the Committee on Foreign Relations of the Senate of such
8 transfer. Such notification shall be provided--

9 ``(1) before the United States Government transfers,
10 or begins to assist in the transfer of, the munitions
11 item, or

12 ``(2) in extraordinary circumstances affecting the
13 vital interests of the United States where time is of the
14 essence, not more than 48 hours after the United States
15 Government transfers, or begins to assist in the transfer
16 of, the munitions item.''.
17

17 SEC. 9. SPECIAL AUTHORITIES.

18 The second sentence of section 614(c) of the Foreign
19 Assistance Act of 1961 (22 U.S.C. 2364(c)) is amended to read
20 as follows: ``The President shall fully inform the chairman
21 and ranking minority member of the Committee on Foreign
22 Affairs of the House of Representatives and the chairman and
23 ranking minority member of the Committee on Foreign Relations
24 of the Senate of each use of funds under this subsection
25 prior to the use of such funds.''.
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1 SEC. 10. HOSTAGE ACT.

2 Section 2001 of the Revised Statutes of the United States
3 (22 U.S.C. 1732) is amended by inserting ``and not otherwise
4 prohibited by law`` after ``acts of war``.

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